

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

EAST HARLEM COUNCIL FOR HUMAN SERVICES
d/b/a/ EAST HARLEM BILINGUAL HEAD START

and

Case 2-CA-36893

DISTRICT COUNCIL 1707, LOCAL 95, AFSCME, AFL-CIO

Allen M. Rose, Esq. for the General Counsel.
Epifanio Castillo, Jr., Esq. for the Respondent.
Thomas Murray, Esq. for the Charging Party.

DECISION

Statement of the Case

D. BARRY MORRIS, Administrative Law Judge: This case was heard before me in New York City on August 1, 2005. Upon a charge filed on March 24, 2005, a complaint was issued on June 30, alleging that East Harlem Council for Human Services, d/b/a East Harlem Bilingual Head Start ("Respondent") violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (the "Act"). Respondent filed an answer denying the commission of the alleged unfair labor practice.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally and file briefs. Briefs were filed by both General Counsel and Respondent.

Upon the entire record of the case, including my observation of the demeanor of the witnesses,¹ I make the following:

Findings of Fact

I. Jurisdiction

Respondent, a New York not-for-profit organization, with a facility located at 440 East 116th Street, New York, NY, has been engaged in providing social services to the East Harlem community, including a head start childcare program. Respondent admits, and I so find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. In addition, it has been admitted, and I find that District Council 1707, Local 95, AFSCME (the "Union") is a labor organization within the meaning of Section 2(5) of the Act.

¹ Credibility resolutions have been based on the witnesses' demeanor, the weight of respective evidence, established or admitted facts, inherent probabilities, and inferences drawn from the record as a whole.

II. The Alleged Unfair Labor Practice

A. The Facts

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East Harlem Bilingual Head Start is a head-start program run by East Harlem Council for Human Services (the "Council"). The facility on 116th Street is a school building with three floors. The head-start program services three to five year old children.

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On July 31, 2003 one of the children was reported missing. A short time later the child was found a block away from the facility. The teacher who was supposed to watch the child was allegedly talking on the telephone and didn't see the child leave. The teacher was suspended but was eventually reinstated.

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On August 8, 2003 Rita Prats, Respondent's Program Director, sent a memorandum to the Administration for Children Services, a New York City agency, detailing the measures the Council was taking following the July 31 incident. The memo listed the development of a new arrival and dismissal procedure and installation of a lobby door buzzer. No mention was made of the installation of surveillance cameras. Sometime thereafter Prats began discussing the possibility of installing surveillance cameras at the facility. She discussed this with members of the New York City Sponsoring Board (the "Sponsoring Board"), the staff and with parents. She did not include representatives of the Union in her discussions.

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The record contains a letter from Metro Security, Inc., dated March 10, 2004 to Prats. The letter lists recommended surveillance cameras. On November 23 Respondent signed a contract with Metro Security for the installation of the cameras. In early January 2005 Metro began installing the cameras. Union representative Luz Palarmo saw that holes were being drilled in the walls. She inquired as to the reason for the holes and was told that cameras were being installed. She then informed shop steward Sylvia Kemp.

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On January 8, 2005 Kemp sent a letter to Prats advising Respondent that "your failure to bargain with the Union" over the installation of the cameras violates the Act. On January 10 Elizabeth Sanchez, CEO of the Council, replied that in her view the installation of the cameras did not require bargaining with the Union and that "we are moving forward with the installation of the cameras".

B. Discussion and Conclusions

1. Surveillance Cameras

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In *Colgate-Palmolive Co.*, 323 NLRB 515 (1997), the Board stated:

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The installation and use of surveillance cameras in the workplace are not among that class of managerial decisions that lie at the core of entrepreneurial control. The use of surveillance cameras is not entrepreneurial in character, is not fundamental to the basic direction of the enterprise, and impinges directly on employment security.

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Respondent argues that the purpose of the cameras was not to monitor the employees but instead was to ensure that no child leave the facility without being detected. The collective-bargaining agreement covers, among others, teachers, custodians and kitchen workers. The record shows that the surveillance cameras view the stairwells and hallways. Teachers are

always required to accompany students. Thus, when the children are using the stairwells and hallways, the teachers, as well as the students, are being observed. In addition, the custodians and kitchen staff receive deliveries at the back door. A surveillance camera views this area.

As the Board observed in *Colgate-Palmolive, supra*, 323 NLRB at 516 n. 10, “Concededly, the Respondent also has a legitimate concern”, however, bargaining about cameras can “embrace a host of matters other than mere location. And, even as to location, mutual accommodations can and should be negotiated. The vice in the instant case was the Respondent’s refusal to bargain”.

Respondent’s brief argues that the decision in *Quazite Corp.*, 315 NLRB 1068 (1994), enf. denied in part and remanded, 87 F. 3d (D.C. Cir. 1996), should control. However, as the Board stated in *Colgate, supra*, 323 NLRB at 515 n.1, no exceptions were filed in that case. The Board stated, “findings adopted under such circumstances are not ...considered precedent for any other case”.

2. Proper Party

Respondent argues that since the collective-bargaining agreement was entered into between the Union and the Sponsoring Board, the Sponsoring Board, and not Respondent, should be the proper party in this proceeding. Sanchez testified that the Council applies the terms and conditions of the collective-bargaining agreement to its employees. She also testified that she has discussions with Kemp concerning employee issues and that she handles employee grievances under the contract. Under such circumstances, I find that Respondent is a proper party to this proceeding. See *Vin James Plastering Co.*, 226 NLRB 125, 129 (1976).

Based on the above, I find that Respondent, by installing surveillance cameras in January 2005, without affording the Union the opportunity to bargain over such installation, committed an unfair labor practice, in violation of Section 8(a)(5) and (1) of the Act. ²

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The employees listed in Article I of the collective-bargaining agreement effective February 1, 2000 constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. At all material times the Union has been the exclusive collective-bargaining representative of the employees in the appropriate unit.

5. By installing surveillance cameras in January 2005, without affording the Union the opportunity to bargain concerning the installation and use of the cameras, Respondent has committed an unfair labor practice, in violation of Section 8(a)(5) and (1) of the Act.

² For the most part, the facts are not in dispute. I have credited the testimony of all five witnesses. They testified consistently and each testified in a forthright manner.

6. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

5 Remedy

Having found that the Respondent has engaged in an unfair labor practice, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

10 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

15 The Respondent, East Harlem Council for Human Services d/b/a East Harlem Bilingual Head Start, its officers, agents, successors, and assigns, shall:

20 1. Cease and desist from:

(a) Failing and refusing to bargain with the Union concerning the installation and use of surveillance cameras.

25 (b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

30 (a) On request, bargain collectively with the Union concerning the installation and use of surveillance cameras.

35 (b) Within 14 days after service by the Region, post at its facility located at 440 East 116th Street, New York, NY, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 10, 2005.

45 ³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

50 ⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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Dated, Washington, D.C., February 6, 2006.

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D. Barry Morris
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

5 Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

10 The National Labor Relations Board has found that we violated Federal labor law and has
ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

15 Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

20 WE WILL NOT refuse to bargain collectively with the Union over the installation and use of
surveillance cameras.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the
exercise of the rights guaranteed to you by Section 7 of the Act.

25 WE WILL, on request, bargain collectively with the Union over the installation and use of
surveillance cameras.

30 EAST HARLEM COUNCIL FOR HUMAN
SERVICES D/B/A EAST HARLEM BILINGUAL
HEAD START

(Employer)

35 Dated _____ By _____
(Representative) (Title)

40 The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor
Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it
investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under
the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's
Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

26 Federal Plaza, Federal Building, Room 3614

New York, New York 10278-0104

45 Hours: 8:45 a.m. to 5:15 p.m.
212-264-0300.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

50 THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST
NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS
NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S
COMPLIANCE OFFICER, 212-264-0346.